



MIDDLETON
REUTLINGER

2500
Brown & Williamson
Tower
Louisville, Kentucky
40202
502.584.1135
502.561.0442 fax
www.midreut.com

Donald H. Visk
Direct Dial: (502) 625-2816
dvisk@midreut.com

April 8, 2005

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K.R.E.F.

Hon. Rosemary Center
General Counsel
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601

Re: Request for Opinion

Dear Ms. Center

We request an official opinion or guidance from the Kentucky Registry of Election Finance on the following question:

Question:

How are monetary and in-kind contributions made to the legal affairs of Dana Seum Stephenson regulated by Chapter 121 of Kentucky Revised Statutes if at all?

Discussion:

Background:

Dana Seum Stephenson was a candidate in the November 2004 election for the 37th senatorial district in Jefferson County. On November 1, 2004, election eve, her opponent, Virginia Woodward, filed an action in Jefferson Circuit Court seeking to disqualify Ms. Stephenson. According to unofficial returns of the election, Ms. Stephenson received more votes than Ms. Woodward. On November 22, 2004, the Jefferson Circuit Court, acting under color of KRS 118.176, ruled Ms. Stephenson ineligible to serve (an action Ms. Stephenson contends is beyond the jurisdiction of the court since the reach of KRS 118.176 expires upon the opening of the polls on Election Day).

Ms. Stephenson then asked the Kentucky state senate to rule on her eligibility and to recognize her as the duly qualified and elected senator of the 37th district. Ms. Woodward then asked the Franklin Circuit Court to enjoin Ms. Stephenson from prosecuting her case before the senate. Special Judge Jennings declined. When the senate ruled on January 7, 2005 that Dana Seum Stephenson is the duly elected senator and qualified to serve, Ms. Woodward asked for, and received, a temporary injunction prohibiting Ms. Stephenson from exercising any senatorial duties pending a full trial on the merits of Ms. Woodward's claim that Ms. Stephenson is ineligible to serve. The Kentucky Supreme Court reviewed the temporary injunction and ruled that it was not an abuse of discretion and directed the Franklin Circuit Court to proceed to resolve the case on its merits.

Applicability of KRS Chapter 121 to Fund-raising after Election:

On information and belief, a group of people intend to raise money to defend Dana Seum Stephenson. Our main question, posed above, can be parsed into three separate questions:

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- Since the election ended on November 2, 2004 are monetary or in-kind contributions to fund the defense of the Franklin Circuit Court case seeking to enjoin Ms. Stephenson from prosecuting her election contest before the state senate under KRS Chapter 120 'campaign contributions' or otherwise regulated by Chapter 121?
- Since the senate seated Ms. Stephenson on January 7, 2005 effectively ending any campaign for office, are monetary or in-kind contributions to pay legal expenses caused by Ms. Woodward's suit 'campaign contributions' or otherwise regulated by KRS Chapter 121?
- Since the Franklin Circuit Court enjoined Ms. Stephenson on January 14, 2005 from exercising the rights and duties of a state senator, are monetary or in-kind contributions to her legal defense 'campaign contributions' or otherwise regulated by KRS Chapter 121?

Possible Arguments:

After Ms. Stephenson was seated by the senate on January 7, 2005, pending legal actions to unseat her are more in the nature of ouster than election contests and appear outside the sphere of election finance regulation generally and KRS 121. 150 (20) specifically.

Once the polls closed on November 2, 2004, the campaign ended. KRS 121. 150 (20) allows for limited-purpose fund-raising and requires reporting for expenses associated with 'election contests'. While the proceeding brought before the senate by Ms. Stephenson was clearly an election contest, defense of the proceeding in Franklin circuit court seeking to enjoin her from prosecuting the election contest was not and, if it was, was not after January 7, 2005.

Thank you for your consideration of these issues. We hope to receive a bright line test that will enable us to know what is regulated by Chapter 121 and what is not. If you need any more information, please let us know.

Sincerely yours,

MIDDLETON REUTLINGER



Donald H. Vish

DHV:lks

cc: Dana Seum Stephenson